

AMENDED IN SENATE AUGUST 18, 2016

AMENDED IN SENATE AUGUST 2, 2016

AMENDED IN SENATE MAY 11, 2016

AMENDED IN ASSEMBLY JANUARY 14, 2016

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1001

Introduced by Assembly Member Maienschein
(Coauthors: Assembly Members Baker, Calderon, Chávez, Cooley,
Gallagher, Grove, Hadley, and Olsen)
(Coauthors: Senators Anderson, Bates, Cannella, and Runner)

February 26, 2015

An act to amend Section 1558 of, and to add Sections 1522.09 and 1556.5 to, the Health and Safety Code, and to amend Sections 11165.7 and 11166 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Maienschein. Child abuse: reporting: foster family agencies.

(1) The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined and including an administrator or employee of a public or private organization whose duties require direct contact and supervision of children, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been

the victim of child abuse or neglect. Under existing law, the failure to make this report is a crime. Existing law also prohibits a supervisor or administrator from impeding or inhibiting the reporting duties, provides that a person making the report shall not be subject to any sanctions for making the report, and prohibits internal procedures to facilitate reporting from requiring any employee required to make reports to disclose his or her identity to the employer.

Existing law, the California Community Care Facilities Act (the act), governs the licensing and regulation of community care facilities, as defined, including foster family agencies for children. Existing law vests responsibility for administering and enforcing laws and regulations governing those facilities in the State Department of Social Services. Existing law authorizes the department to prohibit a person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility or certified family home, or allowing contact with clients of a licensed facility or certified family home by, any employee, prospective employee, or person who is not a client who has committed various acts or has been denied an exemption to work or to be present in a facility or certified family home, as specified.

This bill would expand the definition of mandated reporter to include a board member of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency. By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program. The bill would also require the department to develop a notice regarding the reporting of complaints and would require the posting of that notice in all foster family agencies, as specified. The bill would also require that if the department, as a condition of licensure, requires the chief executive officer or other authorized member of the board of directors and the administrator of a foster family agency to attend an orientation given by the licensing agency that outlines the applicable rules and regulations for operation of a foster family agency, then that orientation shall include a description of policies, procedures, or practices, that violate the provisions described above governing mandated reporters. The bill would also require the department to take reasonable action, including, among other things, prohibiting a person from being a member of the

board of directors, upon a finding of a violation of the provisions described above governing mandated reporters.

(2) *This bill would incorporate additional changes to Section 11165.7 of the Penal Code proposed by AB 1997 that would become operative if this bill and AB 1997 are chaptered and this bill is chaptered last.*

~~(2)~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522.09 is added to the Health and Safety
2 Code, to read:

3 1522.09. (a) The department shall, no later than July 1, 2017,
4 develop a notice that does all of the following:

5 (1) Contains the telephone number to make a complaint
6 regarding a community care facility or child care facility.

7 (2) Includes information about the prohibition of impeding
8 mandated reports.

9 (3) Includes information about the option to make a confidential
10 complaint.

11 (b) The notice developed pursuant to subdivision (a) shall be
12 posted conspicuously in a prominent area in all foster family
13 agencies.

14 SEC. 2. Section 1556.5 is added to the Health and Safety Code,
15 to read:

16 1556.5. (a) If the department, as a condition of licensure,
17 requires the chief executive officer or other authorized member of
18 the board of directors and the administrator of a foster family
19 agency to attend an orientation given by the licensing agency that
20 outlines the applicable rules and regulations for operation of a
21 foster family agency, that orientation shall include, but not be
22 limited to, a description of policies, procedures, or practices that
23 violate paragraph (1) or (2) of subdivision (i) of Section 11166 of
24 the Penal Code.

(b) If the department requires, as part of an application for licensure for a foster family agency, a written plan of operation, that plan of operation shall include a written plan establishing policies, procedures, or practices to ensure that the foster family agency does not violate paragraph (1) or (2) of subdivision (i) of Section 11166 of the Penal Code.

(c) For purposes of this section, a foster family agency is defined in paragraph (4) of subdivision (a) of Section 1502.

SEC. 3. Section 1558 of the Health and Safety Code is amended to read:

1558. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility or certified family home, or allowing contact with clients of a licensed facility or certified family home by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in or receiving services from the facility or certified family home.

(3) Been denied an exemption to work or to be present in a facility or certified family home, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee or certified family home.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility or certified family home, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility or certified family home, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written

1 appeal of the exclusion order. If the excluded person fails to file
2 a written appeal within the prescribed time, the department's action
3 shall be final.

4 (c) (1) The department may require the immediate removal of
5 a member of the board of directors, an executive director, or an
6 officer of a licensee or exclusion of an employee, prospective
7 employee, or person who is not a client from a facility or certified
8 family home pending a final decision of the matter, when, in the
9 opinion of the director, the action is necessary to protect residents
10 or clients from physical or mental abuse, abandonment, or any
11 other substantial threat to their health or safety.

12 (2) If the department requires the immediate removal of a
13 member of the board of directors, an executive director, or an
14 officer of a licensee or exclusion of an employee, prospective
15 employee, or person who is not a client from a facility or certified
16 family home, the department shall serve an order of immediate
17 exclusion upon the excluded person that shall notify the excluded
18 person of the basis of the department's action and of the excluded
19 person's right to a hearing.

20 (3) Within 15 days after the department serves an order of
21 immediate exclusion, the excluded person may file a written appeal
22 of the exclusion with the department. The department's action
23 shall be final if the excluded person does not appeal the exclusion
24 within the prescribed time. The department shall do the following
25 upon receipt of a written appeal:

26 (A) Within 30 days of receipt of the appeal, serve an accusation
27 upon the excluded person.

28 (B) Within 60 days of receipt of a notice of defense pursuant
29 to Section 11506 of the Government Code by the excluded person
30 to conduct a hearing on the accusation.

31 (4) An order of immediate exclusion of the excluded person
32 from the facility or certified family home shall remain in effect
33 until the hearing is completed and the director has made a final
34 determination on the merits. However, the order of immediate
35 exclusion shall be deemed vacated if the director fails to make a
36 final determination on the merits within 60 days after the original
37 hearing has been completed.

38 (d) An excluded person who files a written appeal with the
39 department pursuant to this section shall, as part of the written
40 request, provide his or her current mailing address. The excluded

1 person shall subsequently notify the department in writing of any
2 change in mailing address, until the hearing process has been
3 completed or terminated.

4 (e) Hearings held pursuant to this section shall be conducted in
5 accordance with Chapter 5 (commencing with Section 11500) of
6 Division 3 of Title 2 of the Government Code. The standard of
7 proof shall be the preponderance of the evidence and the burden
8 of proof shall be on the department.

9 (f) The department may institute or continue a disciplinary
10 proceeding against a member of the board of directors, an executive
11 director, or an officer of a licensee or an employee, prospective
12 employee, or person who is not a client upon any ground provided
13 by this section. The department may enter an order prohibiting
14 any person from being a member of the board of directors, an
15 executive director, or an officer of a licensee or prohibiting the
16 excluded person's employment or presence in the facility or
17 certified family home, or otherwise take disciplinary action against
18 the excluded person, notwithstanding any resignation, withdrawal
19 of employment application, or change of duties by the excluded
20 person, or any discharge, failure to hire, or reassignment of the
21 excluded person by the licensee or that the excluded person no
22 longer has contact with clients at the facility or certified family
23 home.

24 (g) A licensee's or certified family home's failure to comply
25 with the department's exclusion order after being notified of the
26 order shall be grounds for disciplining the licensee pursuant to
27 Section 1550.

28 (h) (1) (A) In cases where the excluded person appealed the
29 exclusion order, the person shall be prohibited from working in
30 any facility or being licensed to operate any facility licensed by
31 the department or from being a certified foster parent for the
32 remainder of the excluded person's life, unless otherwise ordered
33 by the department.

34 (B) The excluded individual may petition for reinstatement one
35 year after the effective date of the decision and order of the
36 department upholding the exclusion order pursuant to Section
37 11522 of the Government Code. The department shall provide the
38 excluded person with a copy of Section 11522 of the Government
39 Code with the decision and order.

1 (2) (A) In cases where the department informed the excluded
2 person of his or her right to appeal the exclusion order and the
3 excluded person did not appeal the exclusion order, the person
4 shall be prohibited from working in any facility or being licensed
5 to operate any facility licensed by the department or a certified
6 foster parent for the remainder of the excluded person's life, unless
7 otherwise ordered by the department.

8 (B) The excluded individual may petition for reinstatement after
9 one year has elapsed from the date of the notification of the
10 exclusion order pursuant to Section 11522 of the Government
11 Code. The department shall provide the excluded person with a
12 copy of Section 11522 of the Government Code with the exclusion
13 order.

14 (i) Notwithstanding paragraph (2) of subdivision (a) or
15 subdivision (c) of Section 1550, the department shall take
16 reasonable action, including, but not limited to, prohibiting a person
17 from being a member of the board of directors, an executive
18 director, or an officer of a licensee of a licensed facility or certified
19 family home, or denying an application for, or suspending or
20 revoking, a license, special permit, certificate of approval, or
21 administrator certificate, issued under this chapter, or denying a
22 transfer of a license pursuant to paragraph (2) of subdivision (c)
23 of Section 1524, upon a finding of a violation of subdivision (i)
24 of Section 11166 of the Penal Code.

25 SEC. 4. Section 11165.7 of the Penal Code is amended to read:
26 11165.7. (a) As used in this article, "mandated reporter" is
27 defined as any of the following:

28 (1) A teacher.

29 (2) An instructional aide.

30 (3) A teacher's aide or teacher's assistant employed by a public
31 or private school.

32 (4) A classified employee of a public school.

33 (5) An administrative officer or supervisor of child welfare and
34 attendance, or a certificated pupil personnel employee of a public
35 or private school.

36 (6) An administrator of a public or private day camp.

37 (7) An administrator or employee of a public or private youth
38 center, youth recreation program, or youth organization.

- 1 (8) An administrator, board member, or employee of a public
2 or private organization whose duties require direct contact and
3 supervision of children, including a foster family agency.
- 4 (9) An employee of a county office of education or the State
5 Department of Education whose duties bring the employee into
6 contact with children on a regular basis.
- 7 (10) A licensee, an administrator, or an employee of a licensed
8 community care or child day care facility.
- 9 (11) A Head Start program teacher.
- 10 (12) A licensing worker or licensing evaluator employed by a
11 licensing agency, as defined in Section 11165.11.
- 12 (13) A public assistance worker.
- 13 (14) An employee of a child care institution, including, but not
14 limited to, foster parents, group home personnel, and personnel of
15 residential care facilities.
- 16 (15) A social worker, probation officer, or parole officer.
- 17 (16) An employee of a school district police or security
18 department.
- 19 (17) A person who is an administrator or presenter of, or a
20 counselor in, a child abuse prevention program in a public or
21 private school.
- 22 (18) A district attorney investigator, inspector, or local child
23 support agency caseworker, unless the investigator, inspector, or
24 caseworker is working with an attorney appointed pursuant to
25 Section 317 of the Welfare and Institutions Code to represent a
26 minor.
- 27 (19) A peace officer, as defined in Chapter 4.5 (commencing
28 with Section 830) of Title 3 of Part 2, who is not otherwise
29 described in this section.
- 30 (20) A firefighter, except for volunteer firefighters.
- 31 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
32 resident, intern, podiatrist, chiropractor, licensed nurse, dental
33 hygienist, optometrist, marriage and family therapist, clinical social
34 worker, professional clinical counselor, or any other person who
35 is currently licensed under Division 2 (commencing with Section
36 500) of the Business and Professions Code.
- 37 (22) An emergency medical technician I or II, paramedic, or
38 other person certified pursuant to Division 2.5 (commencing with
39 Section 1797) of the Health and Safety Code.

1 (23) A psychological assistant registered pursuant to Section
2 2913 of the Business and Professions Code.

3 (24) A marriage and family therapist trainee, as defined in
4 subdivision (c) of Section 4980.03 of the Business and Professions
5 Code.

6 (25) An unlicensed marriage and family therapist intern
7 registered under Section 4980.44 of the Business and Professions
8 Code.

9 (26) A state or county public health employee who treats a minor
10 for venereal disease or any other condition.

11 (27) A coroner.

12 (28) A medical examiner or other person who performs
13 autopsies.

14 (29) A commercial film and photographic print or image
15 processor as specified in subdivision (e) of Section 11166. As used
16 in this article, “commercial film and photographic print or image
17 processor” means a person who develops exposed photographic
18 film into negatives, slides, or prints, or who makes prints from
19 negatives or slides, or who prepares, publishes, produces, develops,
20 duplicates, or prints any representation of information, data, or an
21 image, including, but not limited to, any film, filmstrip, photograph,
22 negative, slide, photocopy, videotape, video laser disc, computer
23 hardware, computer software, computer floppy disk, data storage
24 medium, CD-ROM, computer-generated equipment, or
25 computer-generated image, for compensation. The term includes
26 any employee of that person; it does not include a person who
27 develops film or makes prints or images for a public agency.

28 (30) A child visitation monitor. As used in this article, “child
29 visitation monitor” means a person who, for financial
30 compensation, acts as a monitor of a visit between a child and
31 another person when the monitoring of that visit has been ordered
32 by a court of law.

33 (31) An animal control officer or humane society officer. For
34 the purposes of this article, the following terms have the following
35 meanings:

36 (A) “Animal control officer” means a person employed by a
37 city, county, or city and county for the purpose of enforcing animal
38 control laws or regulations.

39 (B) “Humane society officer” means a person appointed or
40 employed by a public or private entity as a humane officer who is

1 qualified pursuant to Section 14502 or 14503 of the Corporations
2 Code.

3 (32) A clergy member, as specified in subdivision (d) of Section
4 11166. As used in this article, “clergy member” means a priest,
5 minister, rabbi, religious practitioner, or similar functionary of a
6 church, temple, or recognized denomination or organization.

7 (33) Any custodian of records of a clergy member, as specified
8 in this section and subdivision (d) of Section 11166.

9 (34) An employee of any police department, county sheriff’s
10 department, county probation department, or county welfare
11 department.

12 (35) An employee or volunteer of a Court Appointed Special
13 Advocate program, as defined in Rule 5.655 of the California Rules
14 of Court.

15 (36) A custodial officer, as defined in Section 831.5.

16 (37) A person providing services to a minor child under Section
17 12300 or 12300.1 of the Welfare and Institutions Code.

18 (38) An alcohol and drug counselor. As used in this article, an
19 “alcohol and drug counselor” is a person providing counseling,
20 therapy, or other clinical services for a state licensed or certified
21 drug, alcohol, or drug and alcohol treatment program. However,
22 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
23 and of itself, a sufficient basis for reporting child abuse or neglect.

24 (39) A clinical counselor trainee, as defined in subdivision (g)
25 of Section 4999.12 of the Business and Professions Code.

26 (40) A clinical counselor intern registered under Section 4999.42
27 of the Business and Professions Code.

28 (41) An employee or administrator of a public or private
29 postsecondary educational institution, whose duties bring the
30 administrator or employee into contact with children on a regular
31 basis, or who supervises those whose duties bring the administrator
32 or employee into contact with children on a regular basis, as to
33 child abuse or neglect occurring on that institution’s premises or
34 at an official activity of, or program conducted by, the institution.
35 Nothing in this paragraph shall be construed as altering the
36 lawyer-client privilege as set forth in Article 3 (commencing with
37 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

38 (42) An athletic coach, athletic administrator, or athletic director
39 employed by any public or private school that provides any

1 combination of instruction for kindergarten, or grades 1 to 12,
2 inclusive.

3 (43) (A) A commercial computer technician as specified in
4 subdivision (e) of Section 11166. As used in this article,
5 “commercial computer technician” means a person who works for
6 a company that is in the business of repairing, installing, or
7 otherwise servicing a computer or computer component, including,
8 but not limited to, a computer part, device, memory storage or
9 recording mechanism, auxiliary storage recording or memory
10 capacity, or any other material relating to the operation and
11 maintenance of a computer or computer network system, for a fee.
12 An employer who provides an electronic communications service
13 or a remote computing service to the public shall be deemed to
14 comply with this article if that employer complies with Section
15 2258A of Title 18 of the United States Code.

16 (B) An employer of a commercial computer technician may
17 implement internal procedures for facilitating reporting consistent
18 with this article. These procedures may direct employees who are
19 mandated reporters under this paragraph to report materials
20 described in subdivision (e) of Section 11166 to an employee who
21 is designated by the employer to receive the reports. An employee
22 who is designated to receive reports under this subparagraph shall
23 be a commercial computer technician for purposes of this article.
24 A commercial computer technician who makes a report to the
25 designated employee pursuant to this subparagraph shall be deemed
26 to have complied with the requirements of this article and shall be
27 subject to the protections afforded to mandated reporters, including,
28 but not limited to, those protections afforded by Section 11172.

29 (44) Any athletic coach, including, but not limited to, an
30 assistant coach or a graduate assistant involved in coaching, at
31 public or private postsecondary educational institutions.

32 (b) Except as provided in paragraph (35) of subdivision (a),
33 volunteers of public or private organizations whose duties require
34 direct contact with and supervision of children are not mandated
35 reporters but are encouraged to obtain training in the identification
36 and reporting of child abuse and neglect and are further encouraged
37 to report known or suspected instances of child abuse or neglect
38 to an agency specified in Section 11165.9.

39 (c) Except as provided in subdivision (d), employers are strongly
40 encouraged to provide their employees who are mandated reporters

1 with training in the duties imposed by this article. This training
2 shall include training in child abuse and neglect identification and
3 training in child abuse and neglect reporting. Whether or not
4 employers provide their employees with training in child abuse
5 and neglect identification and reporting, the employers shall
6 provide their employees who are mandated reporters with the
7 statement required pursuant to subdivision (a) of Section 11166.5.

8 (d) Pursuant to Section 44691 of the Education Code, school
9 districts, county offices of education, state special schools and
10 diagnostic centers operated by the State Department of Education,
11 and charter schools shall annually train their employees and persons
12 working on their behalf specified in subdivision (a) in the duties
13 of mandated reporters under the child abuse reporting laws. The
14 training shall include, but not necessarily be limited to, training in
15 child abuse and neglect identification and child abuse and neglect
16 reporting.

17 (e) (1) On and after January 1, 2018, pursuant to Section
18 1596.8662 of the Health and Safety Code, a child care licensee
19 applicant shall take training in the duties of mandated reporters
20 under the child abuse reporting laws as a condition of licensure,
21 and a child care administrator or an employee of a licensed child
22 day care facility shall take training in the duties of mandated
23 reporters during the first 90 days when he or she is employed by
24 the facility.

25 (2) A person specified in paragraph (1) who becomes a licensee,
26 administrator, or employee of a licensed child day care facility
27 shall take renewal mandated reporter training every two years
28 following the date on which he or she completed the initial
29 mandated reporter training. The training shall include, but not
30 necessarily be limited to, training in child abuse and neglect
31 identification and child abuse and neglect reporting.

32 (f) Unless otherwise specifically provided, the absence of
33 training shall not excuse a mandated reporter from the duties
34 imposed by this article.

35 (g) Public and private organizations are encouraged to provide
36 their volunteers whose duties require direct contact with and
37 supervision of children with training in the identification and
38 reporting of child abuse and neglect.

39 *SEC. 4.5. Section 11165.7 of the Penal Code is amended to*
40 *read:*

1 11165.7. (a) As used in this article, “mandated reporter” is
2 defined as any of the following:

3 (1) A teacher.

4 (2) An instructional aide.

5 (3) A teacher’s aide or teacher’s assistant employed by a public
6 or private school.

7 (4) A classified employee of a public school.

8 (5) An administrative officer or supervisor of child welfare and
9 attendance, or a certificated pupil personnel employee of a public
10 or private school.

11 (6) An administrator of a public or private day camp.

12 (7) An administrator or employee of a public or private youth
13 center, youth recreation program, or youth organization.

14 (8) ~~An administrator~~ *administrator, board member*, or employee
15 of a public or private organization whose duties require direct
16 contact and supervision of ~~children~~. *children, including a foster*
17 *family agency*.

18 (9) An employee of a county office of education or the State
19 Department of Education whose duties bring the employee into
20 contact with children on a regular basis.

21 (10) A licensee, an administrator, or an employee of a licensed
22 community care or child day care facility.

23 (11) A Head Start program teacher.

24 (12) A licensing worker or licensing evaluator employed by a
25 licensing agency, as defined in Section 11165.11.

26 (13) A public assistance worker.

27 (14) An employee of a child care institution, including, but not
28 limited to, foster parents, group home personnel, and personnel of
29 residential care facilities.

30 (15) A social worker, probation officer, or parole officer.

31 (16) An employee of a school district police or security
32 department.

33 (17) A person who is an administrator or presenter of, or a
34 counselor in, a child abuse prevention program in a public or
35 private school.

36 (18) A district attorney investigator, inspector, or local child
37 support agency caseworker, unless the investigator, inspector, or
38 caseworker is working with an attorney appointed pursuant to
39 Section 317 of the Welfare and Institutions Code to represent a
40 minor.

1 (19) A peace officer, as defined in Chapter 4.5 (commencing
2 with Section 830) of Title 3 of Part 2, who is not otherwise
3 described in this section.

4 (20) A firefighter, except for volunteer firefighters.

5 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
6 resident, intern, podiatrist, chiropractor, licensed nurse, dental
7 hygienist, optometrist, marriage and family therapist, clinical social
8 worker, professional clinical counselor, or any other person who
9 is currently licensed under Division 2 (commencing with Section
10 500) of the Business and Professions Code.

11 (22) An emergency medical technician I or II, paramedic, or
12 other person certified pursuant to Division 2.5 (commencing with
13 Section 1797) of the Health and Safety Code.

14 (23) A psychological assistant registered pursuant to Section
15 2913 of the Business and Professions Code.

16 (24) A marriage and family therapist trainee, as defined in
17 subdivision (c) of Section 4980.03 of the Business and Professions
18 Code.

19 (25) An unlicensed marriage and family therapist intern
20 registered under Section 4980.44 of the Business and Professions
21 Code.

22 (26) A state or county public health employee who treats a minor
23 for venereal disease or any other condition.

24 (27) A coroner.

25 (28) A medical examiner or other person who performs
26 autopsies.

27 (29) A commercial film and photographic print or image
28 processor as specified in subdivision (e) of Section 11166. As used
29 in this article, “commercial film and photographic print or image
30 processor” means a person who develops exposed photographic
31 film into negatives, slides, or prints, or who makes prints from
32 negatives or slides, or who prepares, publishes, produces, develops,
33 duplicates, or prints any representation of information, data, or an
34 image, including, but not limited to, any film, filmstrip, photograph,
35 negative, slide, photocopy, videotape, video laser disc, computer
36 hardware, computer software, computer floppy disk, data storage
37 medium, CD-ROM, computer-generated equipment, or
38 computer-generated image, for compensation. The term includes
39 any employee of that person; it does not include a person who
40 develops film or makes prints or images for a public agency.

1 (30) A child visitation monitor. As used in this article, “child
2 visitation monitor” means a person who, for financial
3 compensation, acts as a monitor of a visit between a child and
4 another person when the monitoring of that visit has been ordered
5 by a court of law.

6 (31) An animal control officer or humane society officer. For
7 the purposes of this article, the following terms have the following
8 meanings:

9 (A) “Animal control officer” means a person employed by a
10 city, county, or city and county for the purpose of enforcing animal
11 control laws or regulations.

12 (B) “Humane society officer” means a person appointed or
13 employed by a public or private entity as a humane officer who is
14 qualified pursuant to Section 14502 or 14503 of the Corporations
15 Code.

16 (32) A clergy member, as specified in subdivision (d) of Section
17 11166. As used in this article, “clergy member” means a priest,
18 minister, rabbi, religious practitioner, or similar functionary of a
19 church, temple, or recognized denomination or organization.

20 (33) Any custodian of records of a clergy member, as specified
21 in this section and subdivision (d) of Section 11166.

22 (34) An employee of any police department, county sheriff’s
23 department, county probation department, or county welfare
24 department.

25 (35) An employee or volunteer of a Court Appointed Special
26 Advocate program, as defined in Rule 5.655 of the California Rules
27 of Court.

28 (36) A custodial officer, as defined in Section 831.5.

29 (37) A person providing services to a minor child under Section
30 12300 or 12300.1 of the Welfare and Institutions Code.

31 (38) An alcohol and drug counselor. As used in this article, an
32 “alcohol and drug counselor” is a person providing counseling,
33 therapy, or other clinical services for a state licensed or certified
34 drug, alcohol, or drug and alcohol treatment program. However,
35 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
36 and of itself, a sufficient basis for reporting child abuse or neglect.

37 (39) A clinical counselor trainee, as defined in subdivision (g)
38 of Section 4999.12 of the Business and Professions Code.

39 (40) A clinical counselor intern registered under Section 4999.42
40 of the Business and Professions Code.

1 (41) An employee or administrator of a public or private
2 postsecondary educational institution, whose duties bring the
3 administrator or employee into contact with children on a regular
4 basis, or who supervises those whose duties bring the administrator
5 or employee into contact with children on a regular basis, as to
6 child abuse or neglect occurring on that institution's premises or
7 at an official activity of, or program conducted by, the institution.
8 Nothing in this paragraph shall be construed as altering the
9 lawyer-client privilege as set forth in Article 3 (commencing with
10 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

11 (42) An athletic coach, athletic administrator, or athletic director
12 employed by any public or private school that provides any
13 combination of instruction for kindergarten, or grades 1 to 12,
14 inclusive.

15 (43) (A) A commercial computer technician as specified in
16 subdivision (e) of Section 11166. As used in this article,
17 "commercial computer technician" means a person who works for
18 a company that is in the business of repairing, installing, or
19 otherwise servicing a computer or computer component, including,
20 but not limited to, a computer part, device, memory storage or
21 recording mechanism, auxiliary storage recording or memory
22 capacity, or any other material relating to the operation and
23 maintenance of a computer or computer network system, for a fee.
24 An employer who provides an electronic communications service
25 or a remote computing service to the public shall be deemed to
26 comply with this article if that employer complies with Section
27 2258A of Title 18 of the United States Code.

28 (B) An employer of a commercial computer technician may
29 implement internal procedures for facilitating reporting consistent
30 with this article. These procedures may direct employees who are
31 mandated reporters under this paragraph to report materials
32 described in subdivision (e) of Section 11166 to an employee who
33 is designated by the employer to receive the reports. An employee
34 who is designated to receive reports under this subparagraph shall
35 be a commercial computer technician for purposes of this article.
36 A commercial computer technician who makes a report to the
37 designated employee pursuant to this subparagraph shall be deemed
38 to have complied with the requirements of this article and shall be
39 subject to the protections afforded to mandated reporters, including,
40 but not limited to, those protections afforded by Section 11172.

1 (44) Any athletic coach, including, but not limited to, an
2 assistant coach or a graduate assistant involved in coaching, at
3 public or private postsecondary educational institutions.

4 (45) *An individual certified by a licensed foster family agency*
5 *as a certified family home, as defined in Section 1506 of the Health*
6 *and Safety Code.*

7 (46) *An individual approved as a resource family, as defined*
8 *in Section 1517 of the Health and Safety Code and Section 16519.5*
9 *of the Welfare and Institutions Code.*

10 (b) Except as provided in paragraph (35) of subdivision (a),
11 volunteers of public or private organizations whose duties require
12 direct contact with and supervision of children are not mandated
13 reporters but are encouraged to obtain training in the identification
14 and reporting of child abuse and neglect and are further encouraged
15 to report known or suspected instances of child abuse or neglect
16 to an agency specified in Section 11165.9.

17 (c) Except as provided in subdivision (d), employers are strongly
18 encouraged to provide their employees who are mandated reporters
19 with training in the duties imposed by this article. This training
20 shall include training in child abuse and neglect identification and
21 training in child abuse and neglect reporting. Whether or not
22 employers provide their employees with training in child abuse
23 and neglect identification and reporting, the employers shall
24 provide their employees who are mandated reporters with the
25 statement required pursuant to subdivision (a) of Section 11166.5.

26 (d) Pursuant to Section 44691 of the Education Code, school
27 districts, county offices of education, state special schools and
28 diagnostic centers operated by the State Department of Education,
29 and charter schools shall annually train their employees and persons
30 working on their behalf specified in subdivision (a) in the duties
31 of mandated reporters under the child abuse reporting laws. The
32 training shall include, but not necessarily be limited to, training in
33 child abuse and neglect identification and child abuse and neglect
34 reporting.

35 (e) (1) On and after January 1, 2018, pursuant to Section
36 1596.8662 of the Health and Safety Code, a child care licensee
37 applicant shall take training in the duties of mandated reporters
38 under the child abuse reporting laws as a condition of licensure,
39 and a child care administrator or an employee of a licensed child
40 day care facility shall take training in the duties of mandated

1 reporters during the first 90 days when he or she is employed by
2 the facility.

3 (2) A person specified in paragraph (1) who becomes a licensee,
4 administrator, or employee of a licensed child day care facility
5 shall take renewal mandated reporter training every two years
6 following the date on which he or she completed the initial
7 mandated reporter training. The training shall include, but not
8 necessarily be limited to, training in child abuse and neglect
9 identification and child abuse and neglect reporting.

10 (f) Unless otherwise specifically provided, the absence of
11 training shall not excuse a mandated reporter from the duties
12 imposed by this article.

13 (g) Public and private organizations are encouraged to provide
14 their volunteers whose duties require direct contact with and
15 supervision of children with training in the identification and
16 reporting of child abuse and neglect.

17 SEC. 5. Section 11166 of the Penal Code is amended to read:

18 11166. (a) Except as provided in subdivision (d), and in
19 Section 11166.05, a mandated reporter shall make a report to an
20 agency specified in Section 11165.9 whenever the mandated
21 reporter, in his or her professional capacity or within the scope of
22 his or her employment, has knowledge of or observes a child whom
23 the mandated reporter knows or reasonably suspects has been the
24 victim of child abuse or neglect. The mandated reporter shall make
25 an initial report by telephone to the agency immediately or as soon
26 as is practicably possible, and shall prepare and send, fax, or
27 electronically transmit a written followup report within 36 hours
28 of receiving the information concerning the incident. The mandated
29 reporter may include with the report any nonprivileged
30 documentary evidence the mandated reporter possesses relating
31 to the incident.

32 (1) For purposes of this article, “reasonable suspicion” means
33 that it is objectively reasonable for a person to entertain a suspicion,
34 based upon facts that could cause a reasonable person in a like
35 position, drawing, when appropriate, on his or her training and
36 experience, to suspect child abuse or neglect. “Reasonable
37 suspicion” does not require certainty that child abuse or neglect
38 has occurred nor does it require a specific medical indication of
39 child abuse or neglect; any “reasonable suspicion” is sufficient.
40 For purposes of this article, the pregnancy of a minor does not, in

1 and of itself, constitute a basis for a reasonable suspicion of sexual
2 abuse.

3 (2) The agency shall be notified and a report shall be prepared
4 and sent, faxed, or electronically transmitted even if the child has
5 expired, regardless of whether or not the possible abuse was a
6 factor contributing to the death, and even if suspected child abuse
7 was discovered during an autopsy.

8 (3) A report made by a mandated reporter pursuant to this
9 section shall be known as a mandated report.

10 (b) If, after reasonable efforts, a mandated reporter is unable to
11 submit an initial report by telephone, he or she shall immediately
12 or as soon as is practicably possible, by fax or electronic
13 transmission, make a one-time automated written report on the
14 form prescribed by the Department of Justice, and shall also be
15 available to respond to a telephone followup call by the agency
16 with which he or she filed the report. A mandated reporter who
17 files a one-time automated written report because he or she was
18 unable to submit an initial report by telephone is not required to
19 submit a written followup report.

20 (1) The one-time automated written report form prescribed by
21 the Department of Justice shall be clearly identifiable so that it is
22 not mistaken for a standard written followup report. In addition,
23 the automated one-time report shall contain a section that allows
24 the mandated reporter to state the reason the initial telephone call
25 was not able to be completed. The reason for the submission of
26 the one-time automated written report in lieu of the procedure
27 prescribed in subdivision (a) shall be captured in the Child Welfare
28 Services/Case Management System (CWS/CMS). The department
29 shall work with stakeholders to modify reporting forms and the
30 CWS/CMS as is necessary to accommodate the changes enacted
31 by these provisions.

32 (2) This subdivision shall not become operative until the
33 CWS/CMS is updated to capture the information prescribed in this
34 subdivision.

35 (3) This subdivision shall become inoperative three years after
36 this subdivision becomes operative or on January 1, 2009,
37 whichever occurs first.

38 (4) On the inoperative date of these provisions, a report shall
39 be submitted to the counties and the Legislature by the State
40 Department of Social Services that reflects the data collected from

1 automated one-time reports indicating the reasons stated as to why
2 the automated one-time report was filed in lieu of the initial
3 telephone report.

4 (5) Nothing in this section shall supersede the requirement that
5 a mandated reporter first attempt to make a report via telephone,
6 or that agencies specified in Section 11165.9 accept reports from
7 mandated reporters and other persons as required.

8 (c) A mandated reporter who fails to report an incident of known
9 or reasonably suspected child abuse or neglect as required by this
10 section is guilty of a misdemeanor punishable by up to six months
11 confinement in a county jail or by a fine of one thousand dollars
12 (\$1,000) or by both that imprisonment and fine. If a mandated
13 reporter intentionally conceals his or her failure to report an
14 incident known by the mandated reporter to be abuse or severe
15 neglect under this section, the failure to report is a continuing
16 offense until an agency specified in Section 11165.9 discovers the
17 offense.

18 (d) (1) A clergy member who acquires knowledge or a
19 reasonable suspicion of child abuse or neglect during a penitential
20 communication is not subject to subdivision (a). For the purposes
21 of this subdivision, “penitential communication” means a
22 communication, intended to be in confidence, including, but not
23 limited to, a sacramental confession, made to a clergy member
24 who, in the course of the discipline or practice of his or her church,
25 denomination, or organization, is authorized or accustomed to hear
26 those communications, and under the discipline, tenets, customs,
27 or practices of his or her church, denomination, or organization,
28 has a duty to keep those communications secret.

29 (2) Nothing in this subdivision shall be construed to modify or
30 limit a clergy member’s duty to report known or suspected child
31 abuse or neglect when the clergy member is acting in some other
32 capacity that would otherwise make the clergy member a mandated
33 reporter.

34 (3) (A) On or before January 1, 2004, a clergy member or any
35 custodian of records for the clergy member may report to an agency
36 specified in Section 11165.9 that the clergy member or any
37 custodian of records for the clergy member, prior to January 1,
38 1997, in his or her professional capacity or within the scope of his
39 or her employment, other than during a penitential communication,
40 acquired knowledge or had a reasonable suspicion that a child had

1 been the victim of sexual abuse and that the clergy member or any
2 custodian of records for the clergy member did not previously
3 report the abuse to an agency specified in Section 11165.9. The
4 provisions of Section 11172 shall apply to all reports made pursuant
5 to this paragraph.

6 (B) This paragraph shall apply even if the victim of the known
7 or suspected abuse has reached the age of majority by the time the
8 required report is made.

9 (C) The local law enforcement agency shall have jurisdiction
10 to investigate any report of child abuse made pursuant to this
11 paragraph even if the report is made after the victim has reached
12 the age of majority.

13 (e) (1) A commercial film, photographic print, or image
14 processor who has knowledge of or observes, within the scope of
15 his or her professional capacity or employment, any film,
16 photograph, videotape, negative, slide, or any representation of
17 information, data, or an image, including, but not limited to, any
18 film, filmstrip, photograph, negative, slide, photocopy, videotape,
19 video laser disc, computer hardware, computer software, computer
20 floppy disk, data storage medium, CD-ROM, computer-generated
21 equipment, or computer-generated image depicting a child under
22 16 years of age engaged in an act of sexual conduct, shall,
23 immediately or as soon as practicably possible, telephonically
24 report the instance of suspected abuse to the law enforcement
25 agency located in the county in which the images are seen. Within
26 36 hours of receiving the information concerning the incident, the
27 reporter shall prepare and send, fax, or electronically transmit a
28 written followup report of the incident with a copy of the image
29 or material attached.

30 (2) A commercial computer technician who has knowledge of
31 or observes, within the scope of his or her professional capacity
32 or employment, any representation of information, data, or an
33 image, including, but not limited to, any computer hardware,
34 computer software, computer file, computer floppy disk, data
35 storage medium, CD-ROM, computer-generated equipment, or
36 computer-generated image that is retrievable in perceivable form
37 and that is intentionally saved, transmitted, or organized on an
38 electronic medium, depicting a child under 16 years of age engaged
39 in an act of sexual conduct, shall immediately, or as soon as
40 practicably possible, telephonically report the instance of suspected

1 abuse to the law enforcement agency located in the county in which
2 the images or materials are seen. As soon as practicably possible
3 after receiving the information concerning the incident, the reporter
4 shall prepare and send, fax, or electronically transmit a written
5 followup report of the incident with a brief description of the
6 images or materials.

7 (3) For purposes of this article, “commercial computer
8 technician” includes an employee designated by an employer to
9 receive reports pursuant to an established reporting process
10 authorized by subparagraph (B) of paragraph (43) of subdivision
11 (a) of Section 11165.7.

12 (4) As used in this subdivision, “electronic medium” includes,
13 but is not limited to, a recording, CD-ROM, magnetic disk memory,
14 magnetic tape memory, CD, DVD, thumbdrive, or any other
15 computer hardware or media.

16 (5) As used in this subdivision, “sexual conduct” means any of
17 the following:

18 (A) Sexual intercourse, including genital-genital, oral-genital,
19 anal-genital, or oral-anal, whether between persons of the same or
20 opposite sex or between humans and animals.

21 (B) Penetration of the vagina or rectum by any object.

22 (C) Masturbation for the purpose of sexual stimulation of the
23 viewer.

24 (D) Sadomasochistic abuse for the purpose of sexual stimulation
25 of the viewer.

26 (E) Exhibition of the genitals, pubic, or rectal areas of a person
27 for the purpose of sexual stimulation of the viewer.

28 (f) Any mandated reporter who knows or reasonably suspects
29 that the home or institution in which a child resides is unsuitable
30 for the child because of abuse or neglect of the child shall bring
31 the condition to the attention of the agency to which, and at the
32 same time as, he or she makes a report of the abuse or neglect
33 pursuant to subdivision (a).

34 (g) Any other person who has knowledge of or observes a child
35 whom he or she knows or reasonably suspects has been a victim
36 of child abuse or neglect may report the known or suspected
37 instance of child abuse or neglect to an agency specified in Section
38 11165.9. For purposes of this section, “any other person” includes
39 a mandated reporter who acts in his or her private capacity and

1 not in his or her professional capacity or within the scope of his
2 or her employment.

3 (h) When two or more persons, who are required to report,
4 jointly have knowledge of a known or suspected instance of child
5 abuse or neglect, and when there is agreement among them, the
6 telephone report may be made by a member of the team selected
7 by mutual agreement and a single report may be made and signed
8 by the selected member of the reporting team. Any member who
9 has knowledge that the member designated to report has failed to
10 do so shall thereafter make the report.

11 (i) (1) The reporting duties under this section are individual,
12 and no supervisor or administrator may impede or inhibit the
13 reporting duties, and no person making a report shall be subject
14 to any sanction for making the report. However, internal procedures
15 to facilitate reporting and apprise supervisors and administrators
16 of reports may be established provided that they are not inconsistent
17 with this article. An internal policy shall not direct an employee
18 to allow his or her supervisor to file or process a mandated report
19 under any circumstances.

20 (2) The internal procedures shall not require any employee
21 required to make reports pursuant to this article to disclose his or
22 her identity to the employer.

23 (3) Reporting the information regarding a case of possible child
24 abuse or neglect to an employer, supervisor, school principal,
25 school counselor, coworker, or other person shall not be a substitute
26 for making a mandated report to an agency specified in Section
27 11165.9.

28 (j) (1) A county probation or welfare department shall
29 immediately, or as soon as practicably possible, report by
30 telephone, fax, or electronic transmission to the law enforcement
31 agency having jurisdiction over the case, to the agency given the
32 responsibility for investigation of cases under Section 300 of the
33 Welfare and Institutions Code, and to the district attorney's office
34 every known or suspected instance of child abuse or neglect, as
35 defined in Section 11165.6, except acts or omissions coming within
36 subdivision (b) of Section 11165.2, or reports made pursuant to
37 Section 11165.13 based on risk to a child that relates solely to the
38 inability of the parent to provide the child with regular care due
39 to the parent's substance abuse, which shall be reported only to
40 the county welfare or probation department. A county probation

1 or welfare department also shall send, fax, or electronically transmit
2 a written report thereof within 36 hours of receiving the information
3 concerning the incident to any agency to which it makes a
4 telephone report under this subdivision.

5 (2) A county probation or welfare department shall immediately,
6 and in no case in more than 24 hours, report to the law enforcement
7 agency having jurisdiction over the case after receiving information
8 that a child or youth who is receiving child welfare services has
9 been identified as the victim of commercial sexual exploitation,
10 as defined in subdivision (d) of Section 11165.1.

11 (3) When a child or youth who is receiving child welfare
12 services and who is reasonably believed to be the victim of, or is
13 at risk of being the victim of, commercial sexual exploitation, as
14 defined in Section 11165.1, is missing or has been abducted, the
15 county probation or welfare department shall immediately, or in
16 no case later than 24 hours from receipt of the information, report
17 the incident to the appropriate law enforcement authority for entry
18 into the National Crime Information Center database of the Federal
19 Bureau of Investigation and to the National Center for Missing
20 and Exploited Children.

21 (k) A law enforcement agency shall immediately, or as soon as
22 practicably possible, report by telephone, fax, or electronic
23 transmission to the agency given responsibility for investigation
24 of cases under Section 300 of the Welfare and Institutions Code
25 and to the district attorney's office every known or suspected
26 instance of child abuse or neglect reported to it, except acts or
27 omissions coming within subdivision (b) of Section 11165.2, which
28 shall be reported only to the county welfare or probation
29 department. A law enforcement agency shall report to the county
30 welfare or probation department every known or suspected instance
31 of child abuse or neglect reported to it which is alleged to have
32 occurred as a result of the action of a person responsible for the
33 child's welfare, or as the result of the failure of a person responsible
34 for the child's welfare to adequately protect the minor from abuse
35 when the person responsible for the child's welfare knew or
36 reasonably should have known that the minor was in danger of
37 abuse. A law enforcement agency also shall send, fax, or
38 electronically transmit a written report thereof within 36 hours of
39 receiving the information concerning the incident to any agency
40 to which it makes a telephone report under this subdivision.

1 *SEC. 6. Section 4.5 of this bill incorporates amendments to*
2 *Section 11165.7 of the Penal Code proposed by both this bill and*
3 *Assembly Bill 1997. It shall only become operative if (1) both bills*
4 *are enacted and become effective on or before January 1, 2017,*
5 *(2) each bill amends Section 11165.7 of the Penal Code, and (3)*
6 *this bill is enacted after Assembly Bill 1997, in which case Section*
7 *4 of this bill shall not become operative.*

8 ~~SEC. 6.~~

9 *SEC. 7. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section 17556 of*
15 *the Government Code, or changes the definition of a crime within*
16 *the meaning of Section 6 of Article XIII B of the California*
17 *Constitution.*